

## CITY MANAGER'S REPORT AND RECOMMENDATIONS



Agenda#: VII.B.  
Meeting Date: 8/3/15

### Agenda Item:

## **Discussion and Possible Scheduling of a Public Hearing on Regulation of Recreational Marijuana in the City of Newport**

### Background:

In November 2014, voters passed Measure 91 into law. This law provides for personal growing, possession of limited amounts of non-medical marijuana and directs the Oregon Liquor Control Commission (OLCC) to administer a licensing system for the production, processing, wholesale, and retail sale of non-medical marijuana. Since that time, the State legislature has approved four separate bills that provide guidance to local units of government as to what actions local governments can take in regards to the regulation of recreational marijuana. The combination of effects for the legislation that has been approved, along with the voter approved initiative, have the following impact:

- On July 1, 2015, personal possession of limited amounts of commercial marijuana is allowed for those 21 and older.
- On October 1, 2015, sales of commercial marijuana from medical marijuana dispensaries can begin unless the City enacts an ordinance prohibiting early sales prior to that time.
- By January 4, 2016, the OLCC must approve or deny commercial license applications as soon as practical after this date.
- November 8, 2016, is the next Statewide General election where measures on the prohibition of marijuana activities in local taxes will be voted upon by the local voters.
- December 31, 2016, early sales of commercial marijuana from medical marijuana dispensaries end.

Senate Bill 460, which has just been signed into law by the Governor allows medical marijuana dispensaries to sell recreational marijuana to a person who is 21 years of age or older.

Senate Bill 460 allows cities to adopt an ordinance prohibiting the early sale of commercial marijuana from a medical marijuana dispensary within its jurisdiction without voter approval. The ordinance has to be adopted and be effective by October 1, 2015. That would mean the City Council would need to approve an ordinance prohibiting the early sale of commercial marijuana from medical marijuana dispensaries by the end of this month. Emergency effect can be given to the ordinance by the Council on this issue allowing a decision in September.

The next major decision that the City Council will need to make regarding recreational marijuana is whether to prohibit any of the six types of marijuana activities regulated under House Bill 3400A, which include: medical marijuana processing, medical

marijuana dispensaries, commercial marijuana processors, commercial marijuana growers, commercial marijuana wholesalers, or commercial marijuana retailers. If the City Council wishes to pursue banning any of these six activities, the City Council will have to adopt an ordinance indicating which of the six marijuana activities are prohibited within the City of Newport. Since Newport is located in Lincoln County, which approved the use of recreational marijuana on the November 13, 2014, in a State wide election, the City's ban on any of the components of recreational marijuana would remain in effect until a City voter referendum is held in November of 2016, with the voters determining whether the ban will be permanent. In order to effectively prohibit any of these six activities from occurring within the City, the City Council would need to approve an ordinance with the effective date occurring prior to the end of 2015. This would prevent the Oregon Health Authority (if prohibiting medical marijuana activities), and/or the Oregon Liquor Control Commission (if prohibiting medical marijuana activities) from registering and licensing the prohibited activities until the local voters would vote in November 2016 and either affirm the ban or allow for the activities prohibited by the City ordinance.

If the City does not prohibit marijuana activities through a local ban, the City can adopt an ordinance imposing a 3% tax on the sales made by those with commercial retail licenses. This provision apparently trumps the local ordinances that were approved by many cities in the State of Oregon leading up to the November 14<sup>th</sup> election, including the City of Newport. In order to collect the 3% tax on the sales, the issue requires voter approval at the next Statewide General election (November 2016). The City Council would need to meet the appropriate time schedule in order to have this issue on the November 2016 ballot for consideration by the voters of the City of Newport. Finally, the City can regulate certain aspects regarding the location of the four types of commercial licenses, creating a buffer of no more than a 1,000 feet between retail licenses, the manner of operation of the four types of commercial licenses, and other issues as allowed by law. It would appear to be important that the City Council have any regulations in effect prior to the end of this calendar year in order to properly regulate various aspects of recreational marijuana within the community, unless the City Council enacts an outright ban as outlined earlier.

In reviewing this issue with City Attorney, Steve Rich, and Community Development Director, Derrick Tokos, I believe it is appropriate to prohibiting the early sales by medical marijuana dispensaries within the community, and possibly considering prohibition of some or all of the six marijuana activities regulated under House Bill 3400A that cities are allowed to ban subject to confirmation by the voters in November 2016. This would give the Planning Commission, City Council, and general public an opportunity to weigh in on the development of local regulations prior to legalizing these activities within the City. I believe it would be appropriate for the City Council to schedule a public hearing for the August 17<sup>th</sup> meeting to gain input from residents and businesses regarding various marijuana activities in the City of Newport as allowed by State Law, and consider imposing the restriction of early sales as provided for in Senate Bill 460 within the City of Newport. I have enclosed a sample ordinance for your review on this matter. This will give the City Council more time to evaluate these brand new State laws and the regulatory framework that the City can exercise under these laws in regards to the sale, processing, growing and other aspects of marijuana within the City of Newport.

At a subsequent meeting, the City Council should discuss and provide direction as to whether the Council wants to ban any of the six marijuana activities outlined in House

Bill 3400A. If the Council wishes to pursue a ban on these activities then there will not be the same urgency to develop time, place, and manner restrictions that are allowed under these new laws. On the other hand, if it is the Council's desire to allow any of the six types of marijuana activities outline in this bill, then the City Council should direct the Planning Commission to initiate a review of regulations that the City Council may want to implement regarding the regulations of processing, producing, wholesaling and retailing of marijuana within the City of Newport.

I have enclosed a summary of the 2015 marijuana legislation from the League of Oregon Cities. I have also included a copy of a sample ordinance for your review which would ban early sales of commercial marijuana from medical marijuana dispensaries within the City of Newport.

**Recommended Action:**

I recommend the City Council consider the following motion:

**I move to schedule a public hearing on a possible ordinance prohibiting the sale of recreational marijuana by medical marijuana dispensaries pursuant to Oregon Senate Bill 460 for the Council meeting scheduled on Monday, August 17<sup>th</sup> at 6:00 P.M. in City Hall.**

**Fiscal Effects:**

None by scheduling the public hearing.

**Alternatives:**

If the City Council takes no action, then medical marijuana dispensaries will have the option of selling recreational marijuana effective October 1, 2015, in accordance with Senate Bill 460.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. R. Nebel", is written over a faint, light blue circular stamp.

Spencer R. Nebel  
City Manager